



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 16, 1992

Mr. Allan Rutter
Deputy Executive Director
Texas High-Speed Rail Authority
823 Congress Avenue, Suite 1502
Austin, Texas 78701

OR92-608

Dear Mr. Rutter:

As Deputy Executive Director of the Texas High-Speed Rail Authority (the authority), you ask whether a legal opinion from the authority's attorney regarding the definition of "public convenience and necessity" is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 17534.

You received a request for information under the Open Records Act on September 22, 1992. You requested a decision from this office on October 5, 1992. Consequently, you failed to request a decision within the 10 days required by section 7(a) of the act.

Section 7(a) of the act requires a governmental body to release requested information or to request a decision from the attorney general within 10 days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within 10 days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App. - Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* A demonstration that information is deemed confidential by law or that the release of the information would implicate the privacy or property interests of a third party constitute compelling reasons for withholding information. Open Records Decision No. 150 (1977).

Although you raise the attorney-client privilege in the context of section

3(a)(1), which protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision," this privilege is more properly deemed to be an aspect of section 3(a)(7) of the act, which protects, *inter alia*, "matters in which the duty of . . . an attorney of a political subdivision, to his client, pursuant to the Rules and Canons of Ethics of the State Bar of Texas are prohibited from disclosure." See Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and confidential attorney-client communications. *Id.* Because the privilege is waivable, it cannot be deemed to grant confidentiality for purposes of section 3(a)(1).

We therefore conclude that you have not shown compelling reasons why the information at issue should not be released. The information is presumed to be public and therefore must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-608.

Yours very truly,

A handwritten signature in cursive script that reads "Susan Garrison".

Susan Garrison
Assistant Attorney General
Opinion Committee

SG/RWP/lmm

Ref: ID# 17534

Enclosure: Submitted documents

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cc: Mr. D.M. Malmsten
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